

REMARKS / DISCUSSION OF ISSUES

Claims 1 and 4-12 are pending in the application. Unless indicated to the contrary, claims are amended for non-statutory reasons, such as to delete European-style phraseology.

Multiple Dependency

Claims 6-11 are presented for substantive review, with the improper multiple dependency having been corrected through amendments thereto.

Objections to the Drawings

The amendment to Fig. 1 via the attached Replacement Sheet of Drawings to include the heading 'Prior Art' remedies the objections thereto and renders the objection moot.

Allowable Subject Matter

Applicants gratefully acknowledge the indication of allowability of the subject matter of claims 3-5. New claim 12 provides the subject matter of claim 3 in independent form. Claims 4-6 and 12 are now in condition for allowance.

Rejections under 35 U.S.C. § 103

Claims 1 and 2 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Liu, et al.* and *Liberti, et al.* For at least the reasons set forth herein, these claims are patentable over the applied art.

Claim 1 is drawn to a signal receiver and, as amended, features:

'...wherein the reconstruction means reconstructs the spectrum of the received signal at a frequency lower than the frequency of the spectrum of the received signal prior to being divided into sub-bands.'

The Office Action asserts:

As to claim 2, Liu further shows that each sub-band filter comprises a low-pass filter 283 (see Fig. 3) that is used to reject any high frequency portions of the incoming signals (see column 7, last paragraph). Therefore, because of these low-pass filters, reconstruction means inherently reconstructs the spectrum of the received signal at a frequency lower than the frequency of the spectrum of the received signal prior to being divided into sub-bands.

As such, the Examiner alleges an inherent disclosure of at least one feature of claim 1. Applicants respectfully submit that inherency has not been properly established.

M.P.E.P. § 2112 IV provides that:

*EXAMINER MUST PROVIDE RATIONALE OR EVIDENCE TENDING
TO SHOW INHERENCY*

*The fact that a certain result or characteristic **may** occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. In re Rijckaert, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993) (reversed rejection because inherency was based on what would result due to optimization of conditions, not what was necessarily present in the prior art); In re Oelrich, 666 F.2d 578, 581-82, 212 USPQ 323, 326 (CCPA 1981). "To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing **may** result from a given set of circumstances is not sufficient.' " In re Robertson, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999).*

(emphasis added).

Furthermore, a claim rejection must be based on objective evidence of record, and cannot be supported merely on subjective belief and unknown authority. See, e.g., M.P.E.P. § 2144.03; In re Lee, 277 F.3d at 1344-45, 61 USPQ2d at 1434-35 (Fed. Cir. 2002); In re Zerk, 258 F.3d at 1386, 59 USPQ2d at 1697.

No such concrete evidence in support of the allegation that the applied art necessarily includes *reconstruction means* [that] *reconstructs the spectrum of the received signal at a frequency lower than the frequency of the spectrum of the received signal prior to being divided into sub-bands* has been provided by the Examiner here; nor did the Examiner submit an affidavit as required by 37 C.F.R. § 1.104(d)(2) if this proposed motive were based on facts within his personal knowledge (see M.P.E.P. § 2144.03). Applicants respectfully request that such an affidavit be provided if a rejection continues to be made without a citation of any objective evidence.

Accordingly, Applicants respectfully submit that the present rejection is improper because at least one feature of claim 1 is not disclosed in the applied art. Therefore, claim 1 and the claims that depend therefrom are patentable over the applied art.

Conclusion

In view of the foregoing, applicant(s) respectfully request(s) that the Examiner withdraw the objection(s) and/or rejection(s) of record, allow all the pending claims, and find the application in condition for allowance.

If necessary, the Commissioner is hereby authorized in this, concurrent, and further replies to charge payment or credit any overpayment to Deposit Account Number 50-0238 for any additional fees, including, but not limited to, the fees under 37 C.F.R. §1.16 or under 37 C.F.R. §1.17.

If any points remain in issue that may best be resolved through a personal or telephonic interview, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

Respectfully submitted on behalf of:
Phillips Electronics North America Corp.

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by: William S. Francos (Reg. No. 38,456)
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